

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4581 of 1998

to

FIRST APPEALNo 4585 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI and
MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
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EXECUTIVE ENGINEER

Versus

JOITABHAI VISABHAI DECD.THRO' HEIRS BHARATBhai JOITARAM

Appearance:

Mr. P.G. Desai, GOVERNMENT PLEADER for appellants
in F.A. Nos. 4581/98 to 4583/98
Mr.R.C. Kodekar, AGP, for the appellants in
F.A.Nos.4584/98 and 4585/98
Mr.N.M. Amin for the claimants in F.A. Nos.4581/98 and
4583/98 and 4584/98
Mr. A.J. Patel for the claimants in F.A. No.4582/98
Mr. M.D. Vakil for the claimants in F.A. No.4585/98

CORAM : MR.JUSTICE M.H.KADRI and
MR.JUSTICE J.R.VORA

Date of decision: 06/10/1999

1. Admitted. Learned advocates, M/s. N.M. Amin, A.J. Patel and M.D. Vakil waive service of notice on behalf of the respondents-original claimants in each appeal. At the request of learned counsel appearing for the parties, all the appeals are taken up for final hearing today.

2. Appellants have filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, challenging the judgment and award dated November 28, 1997, passed by learned Assistant Judge, Mehsana, in Land Reference Cases Nos.761/90, 765/90 to 767/90 and 464 of 1991, wherein, the respondents-original claimants were awarded compensation for the acquired lands situated in village Jaspur at the rate of Rs.40/- per sq.mtr. All the abovereferred to land reference cases were heard and decided together and Land Reference Case No.761/90 was treated as main case in which the parties had led common evidence. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

3. A proposal was received by the State Government to acquire agricultural lands of village Jaspur, Taluka Kalol, District Mehsana, for the public purpose of 'Narmada Yojana Canal'. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Jaspur were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the Government Gazette on January 2, 1986. After following usual procedure under the Act, declaration under Section 6 of the Act was made which was published in the Government Gazette on May 4, 1987. Interested persons were, thereafter, served with notices under Section 9(3)(4) of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.150/- per sq.mtr. On the basis of the material produced before him, the Special Land Acquisition Officer, by his award dated May 17, 1989, offered compensation to the claimant at the rate of Rs.3 per sq.mtr. for acquired agricultural lands. The claimants, being dissatisfied with the award, filed written application under Section 18 of the Act requiring the

Land Acquisition Officer to refer the applications to the District Court, Mehsana, and the said applications were referred to the District Court, Mehsana, which were numbered as Land Reference Cases Nos.761/90, 765/90 to 767/90 and 464 of 1991. According to the claimants, the acquired agricultural lands of village Jaspur were at a distance of 10-12 kms from Ahmedabad City and 3 kms. from IFFCO Fertilizer Township. They claimed that the lands acquired were having fertility and compensation offered by the Land Acquisition Officer was inadequate. The appellants filed their written statement, inter alia, contending that the compensation offered by the Land Acquisition Officer was just and adequate, and that the Land Acquisition Officer has taken into consideration all the relevant facts before making his award and the application be dismissed with costs. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.7. In order to substantiate the claim advanced in the reference application, the claimants led oral as well as documentary evidence. The claimants mainly relied upon earlier award of the Reference Court rendered in Land Acquisition Reference No. 22 of 1985. The claimants also produced earlier award of the Reference Court rendered in Land Acquisition Reference Nos.69/89, 73/86 relating to the acquired lands of village Saij, wherein compensation at the rate of Rs.80 per sq.mt was awarded by the Reference Court. Previous award of village Dhanaj was also produced, wherein, the Reference Court had awarded compensation for the acquired lands at the rate of Rs.88 per sq.mtr. The Reference Court, after taking into consideration previous awards in respect of the acquired lands of surrounding villages of Jaspur, held that the claimants were entitled to compensation at the rate of Rs.40 per sq.mtr. for acquired lands of village Jaspur by the impugned common award giving rise to these appeals.

4. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.R.C.Kodekar, submitted that previous awards of the Reference Court rendered in respect of agricultural lands of surrounding villages of Jaspur are neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.40 per sq.mtr. and, therefore, the impugned award should be set aside and as the award is excessive, the appeals should be allowed.

5. M/s. N.M. Amin, A.J. Patel and M.D. Vakil, learned advocates appearing for the claimants, have vehemently submitted that the Division Bench of this Court (Coram: J.M.Panchal & M.H. Kadri, JJ.) by judgment and award dated November 25, 1998 rendered in First Appeal No.4091 of 1998 has confirmed the award of the Reference Court wherein Rs.40/- per sq.mtr. was awarded for the acquired lands of village Jaspur wherein the notice under Section 4(1) of the Act was also issued on the same day, i.e. January 2, 1986. The learned advocates for the respondents have produced copy of the judgment of the Division Bench. It is, therefore, pleaded that the appeals filed by the appellants be dismissed with costs.

6. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

7. In our view, none of the contentions raised by the learned counsel for the appellants deserves any merit and are required to be rejected. The Division Bench of this Court had already confirmed determination of market value of the acquired lands of village Jaspur by judgment and award dated November 25, 1998 rendered in First Appeal No.4091 of 1998. The Division Bench of this Court (Coram:J.M. Panchal & R.P.Dholakia, JJ.) by judgment and award dated June 28, 1999, partly allowed First Appeals Nos.43/98 to 54/98, 300/98 to 314/98 and 315/98 to 328/98 by determining the market value of acquired lands of village Jaspur at the rate of Rs.52/- per sq.mtr. In view of the abovereferred to judgments of the Division Benches of this Court rendered in First Appeal No.43 of 1998 and allied matters, all these appeals deserve to be dismissed.

8. From the impugned award, we find that a direction has been given by the Reference Court to deduct 5% from the amount found payable to the claimant in case of new tenure lands. Such deduction could not have been ordered in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra vs. Babu Govind Gavate, etc AIR 1996 Supreme Court 904. In the said case, it is ruled by the Supreme Court that Section 43 of the Bombay Tenancy and Agricultural Lands Act was enacted to protect the right, title and interest of the tenant who purchased the property and became owner thereof with a view to see that he is not deprived of his ownership, right to possession and enjoyment thereof as a tiller of the soil

to perpetuate the object of the Act and under its scheme, previous sanction is a condition precedent for any transfer, but that does not give power to the Government when it acquires the land exercising the power of eminent domain to deduct any amount from the compensation payable to the owner of the land as determined under section 23(1) of the Act. What is emphasized therein is that the sanction required under section 43 is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under section 43(1), but when the State exercises its power of eminent domain and compulsorily acquires the land, the question of sanction under section 43 does not arise and, therefore, no amount can be deducted from the compensation payable to the owner of the land. In view of the abovereferred to principles laid down by the Supreme Court, direction given by the Reference Court to deduct 5% from the amount of compensation payable to the claimants in case of new tenure lands will have to be set aside.

9. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs. The direction given by the Reference Court to deduct 5% of the amount from the compensation payable to the claimant in respect of new tenure lands is hereby set aside.

(swamy)